



REPUBLIC OF KENYA  
 IN THE EMPLOYMENT AND LABOUR RELATIONS  
 COURT AT MOMBASA  
 MISCELLANEOUS APPLICATION NUMBER 11 OF 2016

**BETWEEN**

JUDITH ABUKA .....  
 CLAIMANT

**VERSUS**

KENYA PORTS AUTHORITY .....  
 RESPONDENT

**AND**

- |   |   |
|---|---|
| KITUKU<br>2. BENSON JUMA THOYA<br>3. KHAMISI TSORI<br><br>ODHIAMBO<br><br>BADI<br><br>BAKARI<br>7. EMMANUEL NDORO DIDA..... | 1. MICHAEL<br><br>4. PAMELA IRENE<br><br>5. SILILU<br><br>6. OSCAR BWANA MKUU<br><br>INTERESTED |
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**RULING**

1. The Applicant and the Interested Parties were candidates in the Dock Workers’ Union elections, which were successfully held sometime in April 2016.
2. In the course of campaigning for their desired positions within the Union, they claimed to have been denied free access to reach voters at the Port, by the Respondent Employer. They filed this Miscellaneous Application before the Court seeking the Court to order the Respondent to allow them access.
3. The Court allowed those orders ex parte, and directed the file closed if there were no subsequent applications filed any of the Parties.
4. Such applications were however filed, and the file remains open. One was filed by the Applicant and the Interested Parties, alleging they were denied access, despite having served the Respondent with the

Court order. They sought to have the Principal Officers of the Respondent cited for contempt of Court. The second application was made by the Respondent. It sought to have the orders of access rescinded. The Respondent argued that the Applicant and the Interested Parties were no longer Employees of the Respondent. They were summarily dismissed for involvement in a strike which the Court had concluded was illegal. The Union itself in any event had asked to be facilitated by the Respondent in conducting its campaign meetings, and had been offered Makupa Welfare Club as a suitable venue where candidates could campaign. It was pointed out by the Respondent that the Port is a 24 hour operations area, and is a secured facility, where the ex-Employees could not have free entry.

The Court Finds:-

5. The Dock Workers Union conducted a successful electoral exercise in April 2016. Parties must be congratulated for conducting a successful ballot. Such democratic exercises are rare in our Trade Unions.

6. It is the right of all persons cleared by a Trade Union, to fully participate in the competition for office. The Dock Workers' Union Constitution, the Constitution of Kenya, and the Labour Relations Act 2007, demand all persons shall exercise their freedom of association, which includes the right to participate in the legitimate activities of their Associations, without any hindrance.

7. The Applicant and the Interested Parties, although no longer Employees of the Respondent, remained Members of the Dock Workers' Union, cleared to participate as candidates for office by their Union, and entitled therefore to sell their policies to the Respondent's Employees who are Members of the Dock Workers Union. They were entitled to access the workplace during non-working hours, and campaign. The Employer has no role in clearing of candidates to run for Trade Union office. It does not determine their eligibility to run for office. Elections are an internal Trade Union exercise. The Applicant and the Interested Parties were entitled to access the workplace to sell their policies.

8. The Respondent however is operational for 24 hours. There are no non-working hours. The Applicant and the Interested Parties sought for access during non-working hours. The Port is a restricted area. Access is limited. Even persons actively working for the Port, have regulated access. There is no free access. There are no non-working hours. The Respondent made arrangements for Trade Union candidates to conduct their campaigns at another of its suitable premises, the Makupa Welfare Club. The Applicant and the Interested Parties did not deny there was an alternative to the Port, offered by the Respondent. They did not disclose this to the Court when the orders issued.

10. In the circumstances the Court finds the application for orders of access to the Port was not necessary. The orders were granted in the absence of a full disclosure of material facts. The Applicant and the Interested Parties had a platform to campaign, provided by their ex-Employer. They were not discriminated against.

11. As the elections have come and gone, the Court shall treat the application seeking to set aside orders of access granted to the Applicants and the Interested Parties, as spent. It would serve no useful purpose to order that those orders are set aside. Similarly the application for contempt of Court is redundant. It has been shown the Respondent had offered the Dock Workers Union and its Members a facility to conduct their electoral activities. It was not proper to demand access to the Port, which is a restricted area, and which operates 24 hours, while a reasonable facility had been availed by the Respondent. ***The Court shall therefore treat all applications on record as spent, with no order on the costs. This file is closed.***

Dated and delivered at Mombasa this 16<sup>th</sup> day of June 2016

James Rika

Judge